

Allison Transmission, Division of General Motors Corporation and Jane E. Kubelsky

Local 933, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Jane E. Kubelsky and Dennis Hinman. Cases 25–CA–21516, 25–CB–7023, and 25–CB–7080

March 3, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

On June 9, 1993, Administrative Law Judge William F. Jacobs issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent Employer and the Respondent Union each filed answering briefs.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the citation to *General Motors Corp.*, 297 NLRB 31, 45 at fn. 13 (1989), and note that the issue of the lawfulness of the union's removal of appointed officials for their involvement in internal union politics was not before the Board on exceptions in that case.

² In adopting the judge's finding that the Respondent Union did not violate the Act by causing the Employer to remove employees Kubelsky and Hinman from their jobs in the Joint Training Center, we agree that *Shenango Inc.*, 237 NLRB 1355 (1978), privileged the Union's conduct because the Union had the right to demand loyalty from persons whom it had designated to serve in these appointive positions. We stress that the present case is distinguishable from the Board's decision in *Roofing, Metal & Heating Associates*, 304 NLRB 155 (1991), in that the union there sought the discharge of an employee who did not work as a union appointee; rather, the employee was employed by the apprenticeship training fund, a third-party entity. In contrast, the Union in the instant case caused the Employer to remove Kubelsky and Hinman from union-appointed positions in the Joint Training Center and to reassign them to positions in the bargaining unit. Kubelsky and Hinman have always remained employees of the Employer. Only their job assignments have changed.

Member Devaney would further distinguish *Roofing, Metal & Heating Associates*, supra, because in that case, the employee exercised his right to become a candidate for union office, which right, in any event, outweighed any interest, under the circumstances of that case, the union had in securing his loyalty. *Id.* at fn. 2, par. 2.

Walter Steele, Esq., for the General Counsel.

Mary Beth Sax, Esq., of Detroit, Michigan, for Respondent Company.

Barry A. Macey, Esq. (Macey, Macey & Swanson), of Indianapolis, Indiana, for Respondent Union.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. These consolidated cases were tried before me on December 3, 4, and 17, 1992, in Indianapolis, Indiana. Jane E. Kubelsky filed charges, on September 11, 1991, against Allison Transmission, Division of General Motors Corporation¹ (Case 25–CA–21516) and Local 933, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)² (Case 25–CB–7023). Complaint issued against the Union on October 31, 1991, alleging that the Union, on September 9, 1991, requested the Company to remove employee Kubelsky from her position of scheduler in the ATD/UAW Joint Training Center and that on the same date she was removed in accordance with the Union's request because she had engaged in protected concerted activities and in intraunion activities thus causing the Employer to discriminate against its employee in violation of Section 8(a)(3), thereby violating Section 8(b)(2) of the Act. An order consolidating cases, complaint and notice of hearing issued on November 21, 1991, alleging that the Employer removed Kubelsky as requested by the Union for discriminatory reasons and imposed onerous and rigorous terms and conditions of employment on her by assigning her to a job assignment more arduous and less agreeable because Kubelsky had refrained from supporting the Union and in order to encourage its employees to support or assist the Union in violation of Section 8(a)(1) and (3).

Dennis Hinman filed a charge, on December 20, 1991, against the Union (Case 25–CB–7080). An order consolidating cases, complaint and notice of hearing issued February 6, 1992, alleging violations on the part of the Union, identical to those contained in Case 25–CB–7023.

Respondents filed answers³ to the complaints denying the commission of any unfair labor practices.

All parties were represented at the hearing and were afforded full opportunity to be heard and to present evidence and argument. On the entire record, my observation of the demeanor of the witnesses, and after giving due consideration to the briefs, I make the following

FINDINGS OF FACT⁴

Background

The Employer, a Delaware corporation with offices and a place of business in Indianapolis, is engaged in the manufacture and nonretail sale and distribution of transmissions and

¹ The Employer or Company.

² The Union.

³ General Counsel's motion to correct the record by including a copy of the Company's answer is denied. The record is already complete. The Company's answer was received as G.C. Exh. 1(t).

⁴ Jurisdiction and the status of the Union as a labor organization are admitted.

related products to military and commercial customers. It employs over 3400 employees, all of whom are represented by the Union involved.

In addition to negotiating collective-bargaining agreements and conducting labor relations concerning wages, hours, and conditions of employment, the Employer and the Union have engaged, since 1973, in a number of joint activities provided for in the section of the national agreement between General Motors Corporation and the UAW entitled Memorandum of Understanding, Joint Activities. The object of these joint activities is to improve the Company's competitiveness by having the Union and the Company operate certain programs, including training programs, together to make certain that employees are continuously updating, expanding, and modernizing their skills to increase production and enhance quality of product.

At the national level there is a committee consisting of very high officials of the Company and Union who negotiate contracts which include provisions providing for the administration of joint activities at the local level. At the local level there is a local joint activity steering committee. On this committee are two local high-ranking officials from the Company and Union that guide the various joint activities in the plant operations. On the local joint activities committee are the divisional personnel director and the operations director representing management and the local union president and chairman of the bargaining committee representing the Union. All the various individual joint activities operating at the Company are responsible to the joint activities committee.

The joint activities committee management members are appointed by higher management. The union members of the committee are elected by the union members in the unit. Management personnel assigned to joint activities are selected by the manager of labor relations. Rank-and-file unit employees assigned to joint activities are appointed by the local chairman of the bargaining committee or, in some cases, by the International. Management is usually notified of the Union's appointments at joint activities committee meetings held periodically. Similarly, the manager of labor relations is notified by the chairman as to who had won elected positions. The manager of labor relations keeps an updated list of union appointees and elected officials. The number of union appointees to joint activities positions, at the time of the hearing, was approximately 60.

When a rank-and-file employee is appointed to a joint activities position by the chairman or by the International through the chairman's recommendation, he keeps the job classification he held at the time of his appointment. Similarly, his pay rate also remains the same.

Management may not remove an employee appointed to a joint activity position by the Union's bargaining committee chairman nor, of course, can the chairman remove an appointee of management. If, for instance, an employee who has been appointed to a joint activity position by the chairman, has a poor attendance record, the personnel manager will so advise the chairman and it is up to the chairman to take appropriate action. According to the credited testimony of the personnel manager, if the Union decides to remove an employee it has appointed to a joint activity position, the Company has no power to prevent it.

One of the several joint activities in which the Company and the Union have participated jointly, over the years, has been the Joint Training Center. Within the center are various activities such as adult basic education, education and training support activities, and skilled trades. Assignments or transfers of rank-and-file employees to, and out of, jobs within the Joint Training Center generally follow the transfer agreement contained in the contract which applies to all transfers in general. However, the transfer agreement does not cover all possible situations, in which case a negotiated transfer may take place. For example, if a specific transfer would ordinarily follow from the contract but the employee involved had a history of being unable to get along with a particular employee or supervisor, the transfer would not follow the usual course but rather, the Company and Union would negotiate a different transfer in order to avoid the foreseeable problem.

In the ordinary course of events, if an employee were dissatisfied with his job, he would file a transfer application to change his classification, department, or shift to a different and specific classification, department, or shift. An employee can have on file as many as five applications at one time. Requests for transfer are granted in accordance with seniority. Once the request is granted, however, the employee may not file another application for at least 1 year.

The applications for transfers to specific positions are kept on file in personnel. At the same time, the various departments keep track of requisitions or job openings as they occur due to retirements, quits, or changes in operations. As job openings occur, they are filled, where possible, from the list of employees who have filed applications for those jobs. Unless an employee has filed an application, he will not be considered for the job which has become available. At the Joint Training Center, the same procedure is followed as throughout the rest of the Company. If an employee is removed from his appointed job at the center, he will be transferred to any open job for which he has filed an application if there is an opening and if he is the senior employee applying. If there is no opening or if he has no application on file, he will be assigned to any job in his classification, as required by contract, at the discretion of the Employer. He has no right to be returned to his previous job nor to his department or shift, just to his classification.

As noted, under the language of the transfer agreement, an open requisition is filled by application in accordance with seniority. When the opening is filled, a secondary opening results when the applicant leaves his job open in order to take the job for which he applied. The transfer agreement does not cover this secondary requisition and the Employer is free to fill the secondary requisition any way it sees fit.

The Instant Case

Jane Kubelsky, one of the two alleged discriminatees in the instant proceeding, was hired by the Company in June 1977 as a stock chaser. The job entailed mostly working with computers with no manual labor. Though her job classification was changed sometime thereafter to material services trucker (MST), her duties remained similar in nature.

In 1983, Bob Boone was elected chairman of the shop committee and thereafter appointed Dave Crawley as coordinator of the newly implemented training program. Boone and Crawley subsequently approached Kubelsky to also become

a training coordinator. Although she initially turned the offer down, she later accepted when management also asked her to take the job. This was in 1984.

During her first few months as training coordinator, Kubelsky worked closely with management to decide precisely what subject matters were to be taught and in what sequence. Management supplied Kubelsky with the names of people with expertise in the areas that were going to be taught. Kubelsky later sat down with members of management and with these people to develop course content, material, books, and tests. She did not, however, play any role in deciding who was to take the courses. These were open to everyone but were of particular value to employees transferring to new jobs.

At the time of her initial appointment, Boone advised Kubelsky that she would have nothing to do with the contract, bargaining, or the handling of grievances. Her job was limited to setting up courses and training employees in subjects relating to material handling. She was one of a handful of trainers. Boone remained chairman and Crawley remained in charge of the Union's side of the training center. Kubelsky performed her duties as here described through 1986.

During the period while Boone was chairman he urged those involved in the training program to make themselves available to the shop floor people to explain what was happening during bargaining. Kubelsky was to remain knowledgeable so as to be able to answer any questions posed by the employees. She became a supporter of Boone and a close friend. She spent 2 to 4 hours per week out on the floor making contacts on his behalf. When he ran for chairman again, she handbilled for him.

In April 1986, Kubelsky was requested by Crawley and his management counterpart to begin keeping hourly records of training. She was told to track the type of courses taken by the various employees, the hours spent taking the courses, and the cost to the Company. In addition to the newly assigned duties, Kubelsky was required to continue to do the work she had been performing since she was initially assigned to the training center.

In January 1987, the Company closed down the training center. Kubelsky was sent back to work in her old job classification, albeit not in her old department. The center remained closed for about 6 months. When it opened again, Boone began to reassign personnel to the center two and three at a time, Kubelsky among them. She then undertook the same responsibilities she had had before.

Following the reinstitution of the center, it grew larger. Many more employees began to participate. Kubelsky's recordkeeping duties expanded while her work on creating courses abated.

Sometime in 1988, one Don Winchester was appointed coordinator at the training center by the Union. Kubelsky found Winchester to be abusive and in response quit her job at the center and went back to work with her tools on the shop floor in her old classification and in the department she had last worked. Within 2 months she was transferred, however, to another department. She was asked repeatedly, by several people to return to the center, most often by Boone, who was still shop chairman at the time. She finally did so, after about 60 days.

Sometime in 1988, Crawley and his management counterpart requested Kubelsky to undertake the scheduling for the

entire center including for the salaried participants. Thereafter, she became responsible for recordkeeping for all individuals involved in training at the center, both hourly and salaried. She tracked what instructors were teaching, what courses in what classrooms and when, and who were attending classes. Although she did not have authority to determine who the teachers would be, she would decide that a certain number of day-shift classes in a particular subject would be necessary, then permit the trainers to choose among themselves what slot each would pick. When they made these decisions, Kubelsky would put this information into the computer.

To determine what courses would be necessary, Kubelsky would, on the first and third Monday of each month, call personnel and obtain the list of employees who were to be transferred that day. She would then schedule the transferees for a needs assessment, a test administered by the trainers who would then evaluate the results of the test. Depending on the results of the evaluations, the transferees would be assigned courses in the subjects in which they were weakest. The trainers would then supply Kubelsky with a list of transferees with the courses each would require and the scheduling would follow.

In addition to the training of transferees, courses were also offered on a personal interest basis for employees who wished to upgrade the skills they possessed in the jobs they already held. Computer courses were made available as well.

With the huge increase in her recordkeeping duties, Kubelsky was forced to advise her superiors that she could no longer participate in the actual training or development of training. She recommended that another person be gotten to take over some of the duties which she was being forced to relinquish. They agreed. Subsequently, David Crawley appointed Dennis Hinman, the other alleged discriminatee in the instant case, to be Kubelsky's assistant. The chairman, of course, had to approve the appointment.

As noted earlier, individuals appointed to joint activities from the union side were appointed by either the International or the local chairman. The International maintained a strict policy whereby their appointees were forbidden from getting involved in local union politics. The rationale behind the prohibition was to maintain the integrity of the joint programs by preserving confidentiality. It was understood that appointees to international benefits representatives jobs and to joint activities positions would, by virtue of their positions, obtain access to confidential information which could be damaging if released to individuals running for local office or to factions supporting one group over another. Loyalty of appointees to one political faction over another could result, following a change in local administration, in the wholesale replacement of appointees and the consequential necessity of training new appointees in the duties of their positions due to lack of experience. Historically, where an internationally appointed representative has ignored the prohibition, he has been removed.

In 1989, the shop chairman, Bob Boone, left that position to take a job with the International Union. Terry Yount was initially appointed to take Boone's place, then later was elected chairman. According to Ron Garrett, joint activities representative under Boone, when Boone was chairman, the trainers were involved in local union politics. Yount testified that under Boone's chairmanship, appointees had to go out

on the floor 4 to 8 hours per week, and do nothing but "campaign and politick for him." He felt that this was a misuse of joint training funds and determined to change the policy.

According to Garrett, shortly after Yount was appointed chairman, he asked Garrett to get all the appointed people together. Garrett did so. These were joined by the members of the shop committee. At this meeting, Yount announced that the best way the appointees could serve the membership was to perform their assigned duties and to leave politics to the politicians. He stated that campaigning was absolutely forbidden and that all trainers would henceforth follow the guidelines of the International Union—no involvement in politics.⁵ Following this initial meeting, Yount held a second meeting with the trainers and other appointees at which he reiterated the statements he had made during the first meeting. In addition, Yount instructed Garrett to remind the appointees of the prohibition against politicking during his weekly meetings with them in the future.

Immediately after Yount's first meeting with the trainers and other appointees, Kubelsky told Garrett that she did not like Yount's prohibition on politicking. She said she wanted to be involved in politics and did not want to miss out on all the fun. Garrett cautioned, "You heard the chairman. You know what the repercussions will be. So if you get involved, you're going to be in deep water. If you get caught, you're history."⁶

In accordance with Yount's instructions, Garrett, on two or three occasions, during his periodic meetings with the trainers, reminded them of the prohibition against politicking. He instructed them to walk away, if someone tried to talk politics. Under the rules, an appointee may not run for elected office such as shop committeeman.

Yount is full-time shop chairman, an elected office. As such, he oversees 15 committeemen and 15 alternate committeemen. Under him are three zone committeemen, three district committeemen-at-large, and an apprenticeship person. These people make up the shop committee. He and they make up the bargaining committee which negotiates collective-bargaining agreements every 3 years. The chairman heads negotiations. He is also responsible for all of the rank-and-file appointments to positions in the training center and for the International appointments as well, at least as far as their duties are concerned. The shop committee also participates in the second step of the grievance procedure.

The chairman reports to various International officers. Immediately above Yount is Paul Elliott, the International's servicing representative.

When Yount became chairman in 1989, he appointed a number of trainers. Others, including Kubelsky and Hinman, were already in their training positions when he took office, although it had been Yount who recommended to Boone that he appoint Hinman. Yount also removed a number of trainers, admittedly because they supported a candidate against him or because they, themselves, ran against Yount. Yount, in 1990, had the International remove one of their appointees for being insubordinate.

⁵ Although Yount emphasized that he was against all politicking, not just campaigning against himself and his candidates, Kubelsky credibly testified that she helped Yount with his campaign for chairman.

⁶ Kubelsky denied that this conversation occurred. I credit Garrett.

By early 1990, the training program had greatly enlarged. The number of trainers had grown from a handful to 28 or 30. Consistent with that, Kubelsky's scheduling and record-keeping duties increased dramatically. She told Hinman that she would like to get him switched to full-time scheduling and recordkeeping, and asked him whether he would take the job. He told her that he would. Working through Crawley and his management counterpart, Kubelsky succeeded in having Hinman transferred sometime in the fall of 1990.

Hinman's new duties initially included inputting of previous history of people who had taken the training classes into the recordkeeping system. Later Kubelsky taught him scheduling. Another duty performed by Kubelsky and Hinman necessitated their being out on the floor on certain Monday mornings, delivering letters to different areas to salaried training coordinators, advising them of the classes scheduled for their workers the following week. They would take 2 to 3 hours to make these deliveries to the salaried training coordinators. The deliveries could have been made in a fraction of the time taken, but Kubelsky would frequently stop to chat with employees who called out to them.

While working with Kubelsky, Hinman became aware that she was unhappy with Yount. She had told him as much. Once or twice a day, Kubelsky would become engaged in personal telephone calls which Hinman could tell were not work related. On these occasions, he would get up and leave the office rather than overhear something to which he did not wish to be privy. For the same reason, when they were out on the floor delivering letters and Kubelsky would stop to chat with someone, Hinman would walk on ahead so as to avoid hearing any part of the conversation, and then would wait for her further down the aisle.

The records that Kubelsky and Hinman were keeping for salaried and hourly employees in the fall of 1990 consisted of class title, date they took the class, and hours spent in class. Records kept did not include pay, benefits, or hospitalization.

In May 1991,⁷ candidates began campaigning for the office of regional director. That office is far removed from Local 933 and oversees locals in Kentucky and Indiana. Although employees do not vote directly for the regional director, delegates are elected from the locals who attend the convention and cast votes for the regional director. Although the actual election was not scheduled to take place until June 1992, the campaigning was starting in the spring of 1991.

In May, Boone announced his candidacy for regional director. Elliott, Yount's immediate superior, had already done so. Yount and the shop committee came out in support of Elliott. Kubelsky came out strongly in favor of Boone.

Kubelsky's loyalty to Boone was based on several factors. Boone had appointed her to her position at the training center and her success there was in large part due to him. She, in turn, took an interest in his future success. She tutored him in English and her brother tutored him in mathematics. This was done at the training center until early summer when Boone was barred from the premises. This was possible because he was no longer actively employed by the Company but was rather on leave, working as a servicing representative for the International in the Fort Wayne area. According

⁷ Hereinafter, all dates are in 1991 unless noted otherwise.

to Kubelsky, Yount called the regional director to have Boone barred from the premises.

In addition to loyalty and friendship, Kubelsky also favored Boone because she felt that he had been a better chairman than Yount and was a better candidate than Elliott. Kubelsky disapproved of a number of positions taken by Yount and his shop committee and felt that Boone would have operated differently. Finally, since Boone had placed Yount in the chairman's position when he left, and they were political allies at the time, Kubelsky felt that Yount was being disloyal by backing Elliott over Boone.

The campaign for regional director made political enemies of Yount and Boone. Kubelsky made no secret of her loyalty to Boone, with whom she maintained contact, mostly by telephone, once or twice a week. She also became outspoken concerning her displeasure with Yount and criticized him to her fellow employees, in particular, with regard to what she perceived as his lack of loyalty to Boone but also with regard to the way he handled his activities as chairman.

In mid-May, Yount spoke to Crawley and Kubelsky, in private, about the campaign for regional director. Yount told Kubelsky that Boone was running against Elliott and was crazy for doing so because he did not stand a chance. He said that he and the shop committee were supporting Elliott and that he did not want Crawley or Kubelsky helping Boone in any way, neither with campaign material nor by showing support. At this point, Kubelsky mentioned that she had been tutoring Boone. Yount said that tutoring was all right as long as she did not get involved in politics.

Despite Yount's admonition, Kubelsky continued to discuss union affairs, collective-bargaining and union-related problems with her friends by telephone and with employees on the floor on Mondays when she was delivering her letters containing course assignments and schedules. Her criticisms and comments were unrelated to her position with the training center and most often had to do with the weakness of the shop committee, its failure to keep jobs from "going out the door," its permitting outside contracting "to run wild" in the plant, and its failure to make itself available when needed.

The Friday after Yount's meeting with Crawley and Kubelsky, Yount called a meeting with all of the trainers, appointees, and members of the shop committee. Yount reiterated to those present what he had told Crawley and Kubelsky earlier that week. He stated that he and the shop committee were supporting Paul Elliott for regional director and asked if anyone in the room had any problem supporting Elliott. One employee, Mike Aldridge, stood up and said that he had a problem supporting Elliott because he had been a friend and supporter of Bob Boone for over 20 years. Yount replied that Aldridge had a lot of courage to stand up in front of everyone and tell him to his face that he was going to support Boone over Elliott. Yount then closed the meeting and walked across the hall from the conference room to a trainer's office. There, he made a phone call, overheard by Kubelsky, during which he stated to some unknown individual that he wanted Aldridge removed from office. Stan Collins testified that Aldridge was removed from office and that before removing Aldridge, he spoke with Yount about this removal.

The action date for Aldridge's removal was June 17, the process date was July 1, according to personnel records. The

removal and reassignment was pursuant to a negotiated transfer. Aldridge was returned to the classification he had been assigned several years earlier through contract negotiations. He was not, however, returned to either the plant or the department where he had worked prior to his appointment as trainer. Aldridge had no transfer application nor demand 150⁸ application on file so his placement was at the discretion of the Company. He was placed where he was needed subject to the results of the negotiated transfer to which all trainers are subject.

A couple of weeks after Yount's meeting with the trainers and other appointees during which Aldridge had taken his position in favor of Boone, a member of Yount's shop committee, Darrel Andry, called Hinman and asked him to have lunch with him. When they met for lunch, Andry advised Hinman that he felt that Boone had been dabbling in local politics and he could not understand why. He asked Hinman if he could be the eyes and ears of the committee in the training department and let the committee know if anyone had communications with Boone. Hinman replied that he felt very uncomfortable about being put in that position and did not think it was fair. Andry apparently made no further comment. Hinman later explained to Yount that he did not want to be a rat.

According to employees Carolyn Rhoton and Mary Ebert, during the summer of 1991, they began to see Kubelsky more often out on the floor than previously. Sometimes she was alone and sometimes she was accompanied by Hinman. One Monday morning, later in the summer, they noticed Kubelsky and Hinman walking up the aisle in their direction. Kubelsky stopped to chat but Hinman kept walking. After some small talk, Kubelsky started talking about her support of Boone. Rhoton said that she thought that Kubelsky had been asked not to politick for Boone on the job. Kubelsky replied that Bob Boone put her where she was and she would always support him. The conversation then turned to Terry Yount and his shop committee. Kubelsky stated that neither Yount nor the members of the committee could be trusted, that they lied and one could not believe anything they said. She said they were crooked. She then excepted Tim Snyder, however, and identified him as the only man on the committee worth keeping. Rhoton defended the shop committee, stating that she had never caught any of them in a lie, that when she asked them for the truth, they told her the truth. Kubelsky persisted, arguing that just because Rhoton had not caught them did not mean they did not lie. The conversation ended there.

Following her conversation with Kubelsky, Rhoton reported its content to her committeeman, Dave Cline. Cline, in turn, remarked on it to Yount who later met with Rhoton and asked her what Kubelsky had said. Rhoton repeated her conversation with Kubelsky to Yount. This was the same day. Yount made no comment at the time.

About this time, Yount heard from several of his committeemen that Kubelsky had been seen out on the floor. He told Garrett that he should tell Kubelsky to stay in the training center and do her job, and not to be out on the floor.⁹

⁸ Skilled trades could file a preferred plant application under the contract.

⁹ According to Yount, he did not want Kubelsky to deliver her letters in person but rather to mail them by company mail, or drop them off at his regular Wednesday meetings. Kubelsky and Hinman

He also visited Kubelsky at her workplace at the training center. He asked her if she had a problem with him or was mad at him. She replied that although she objected to some of the things that were going on in the local, she had no problem with him specifically, and that she still intended to vote for him for chairman in the forthcoming election. According to Kubelsky, Yount did not, during this meeting, mention the amount of time Kubelsky was spending on the floor, her politicking, or her conversation with Rhoton.

After receiving reports from Rhoton and other sources that Kubelsky and other trainers and appointees were politicking against him and his committee, Yount decided he would meet with the individuals involved and likely remove them from office. Yount apparently shared his intentions with others because on the evening of Thursday, September 5, Kubelsky received a call from Boone who advised her that he had received information that her phone in the training center had been tapped, that union officials had been playing the tapes of Kubelsky's phone calls for other union officials, and that she would be removed from office the following Monday because of what was on the tapes.

On Friday morning, September 6, Kubelsky went to the personnel office accompanied by Hinman and spoke with Ron Lane, the individual in charge of placement. She told him that she had reason to believe that she was going to be removed from office the following Monday and wanted to know where she would be placed. Lane pulled her cardex which reflected her employment history and, after noting that her old department no longer existed, told her that she would either fill an open requisition in her classification, if one existed or, if not, bump the youngest person in her classification in the division. Lane then took Kubelsky and Hinman around to speak to the person in charge of requisitions to see if there were any openings. They were then advised that there were three open requisitions in Kubelsky's classification in the AT building, also known as plant 7. Lane told Kubelsky that one of the three open requisitions would be held for her and she was supposed to be assigned there. He cautioned her, however, that if the Union and management cut another deal, in the negotiated transfer, he had no control over that.

After talking with Lane, Kubelsky went to the labor relations department and spoke with Stan Collins.¹⁰ She told Collins that she expected to be removed from office the following Monday, that she had checked with Ron Lane, and that there were open requisitions in the AT building in her classification. She said that that was where she was supposed to be going and that if Yount came over there Monday and tried to cut a deal to move her somewhere else, she would know that something had happened. Collins simply said, "Okay."

Collins testified that he received a call from Kubelsky inquiring about where she would be assigned if she were removed from office. After checking with his placement clerk, he advised her that there were two open requisitions in her classification in the AT building—plant 7. This conversation occurred prior to any discussions with the Union concerning the placement of Kubelsky. Collins acknowledged that ac-

credibly denied that they were ever told to stop delivering their letters in person.

¹⁰ Collins, at the time, was manager, employee relations.

cording to the records, following negotiations with the Union, Kubelsky was placed in a position other than in plant 7.

It was also probably on Friday, September 6, that Yount first contacted Stan Collins and Dave Jackson, assistant personnel director, and advised them that he was going to have a meeting with several of his trainers, including Kubelsky, to discuss some "violations" that they had committed against the Union and himself. He said that he did not know what he was going to do, but he might be requesting that they be put back in their original classifications. He asked Collins where Kubelsky might go if she were removed from the training center. Collins advised Yount that there were three openings in her classification in the AT building.

On the morning of September 9, Yount called Garrett and told him to get Crawley and meet him in a classroom in the training center. Garrett followed instructions and the three and the entire shop committee met. Yount then gave Crawley a list of trainers to whom he wished to speak about their being involved in politics. Among the names on the list were Jerry Holden, Dennis Hinman, Dan Kubelsky, Harold McBryar, Philip Hale, and Jane Kubelsky. Certain of these were trainers with whom Kubelsky had discussed politics either over the phone or in person.

About 8 or 9 a.m., Kubelsky and Hinman were out on the floor, in one of the plants delivering letters, as they usually did on Monday mornings, when Hinman's pager went off. It was the receptionist who advised him that the chairman wanted him and Kubelsky to return to the training center. When they returned, Hinman was summoned to the classroom where the meeting was taking place.

When Hinman entered the classroom he noticed that Yount, Crawley, Garrett, and virtually all of the shop committee were present. Yount immediately began questioning Hinman concerning his involvement with Boone. He asked him if he had had lunch with Boone the previous Friday. Hinman denied it. Yount then asked if Hinman had seen Boone the previous Friday. Again, Hinman replied that he had not. Yount accused Hinman of lying and stated that he had a good source that said that Hinman had been seen having lunch with Boone on Friday. Hinman explained that the previous Friday he had gone to lunch with 13 trainers, 1 of whom was celebrating a birthday.

Yount next asked Hinman if he had been politicking against him. Hinman denied it. Yount then asked him if Kubelsky had been politicking against him; Hinman said no, not to his knowledge, that when Kubelsky stopped to chat, he always walked ahead, to avoid hearing what was said. Yount asked if Kubelsky had been receiving phone calls from Harold McBryar. Hinman conceded that she had. Yount then asked what they were about and Hinman replied that he did not know because he did not listen in on the conversations. Hinman was then dismissed from the meeting.

Prior to Hinman's interrogation, several of the other trainers had been called into the meeting and had been questioned in a similar manner. As Hinman was leaving the meeting, Crawley was instructed to ask Kubelsky to come in. Crawley and Hinman walked to Kubelsky's office together. Hinman was quite agitated. When they arrived, Hinman described to Kubelsky, in detail, the questioning he had just gone through. When Crawley invited Kubelsky into the meeting, she refused to go. She commented about the interrogation and not

wanting to be a part of their "Gestapo tactics." Crawley then sent Hinman back to the classroom to get Garrett.

When Hinman reported to Garrett that Kubelsky had refused to come to the meeting, Garrett informed Yount of her refusal. Yount then instructed Garrett to invite Kubelsky to come into the meeting and answer some questions. He told Garrett to tell her that she could either come into the meeting or quit, that it was her choice.

Garrett left the meeting along with Crawley who had, in the meantime, returned to the classroom. As Garrett approached Kubelsky, who was just outside her office, he was greeted by a barrage of profanity, directed at him, Yount, and the committee, even before he had a chance to say anything. Kubelsky stated that she wanted nothing to do with his "Gaddamn Gestapo kangaroo court." Garrett objected, stating that he was only the messenger. He then told her, as instructed, that she could go into the room and answer some questions or she could quit the training center, and those were her choices.¹¹ Kubelsky stated that she was not going into that room, referring to Yount and the committee members in the most derogatory and obscene terms. Garrett, at this time, or shortly thereafter, told Kubelsky that Yount had told him to tell her that she was fired, that she should clean out her desk and be out of there by 3 o'clock, and that there would be no overtime.

After Kubelsky refused to attend the meeting, the shop committee called in several other trainers to examine them as to their political activities and those of their fellow appointees. Jerry Holden, Dan Kubelsky, and Harold McBryar were summoned and questioned as well as others.

After Garrett told Kubelsky that she had been fired from her training job, she called the personnel placement office to find out which of the three requisitions she was going to fill. This was about 10:30 a.m. She was told at that time that she would be going to department 4302 in the AT building. Kubelsky then began to clean out her desk.

After the shop committee meeting with the various trainers was over, Yount decided, on the basis of what he had learned from them and others that he would remove three appointees in addition to Kubelsky, Hinman, and McBryar for politicking and Hale for failure to perform his duties satisfactorily. Yount testified, in explaining why he had removed McBryar, Kubelsky, and Hinman, that they had been supporting Boone as a candidate and had been out on the floor making derogatory and slanderous remarks about him and his shop committeemen. He added that Kubelsky was also fired for insubordination for refusing to attend the meeting. He testified that he did not appreciate her standing outside the door to the meeting room, calling him names, and making an obscene gesture at him.¹²

After the meeting, Yount contacted Collins and told him that he had removed the four appointees and that they should be returned to their classifications. The transfers were negotiated between Collins and Yount, at that time. The actual discussion between them, concerning placement of the removed appointees, however, is not reflected in the record.

Half an hour to an hour after the meeting, after lunch, Crawley came to Hinman's and Kubelsky's office and along

with Phil Hale took them to an empty classroom. He then told them that they were being removed from the training program, that they would be getting new assignments by the end of the day, and to start clearing out their desks and be done by the end of the day.

About 2 p.m., Crawley again visited their office and advised them of their assignments. Hinman was assigned to department 1350 in the WT building where he was to fill an open requisition. Kubelsky was assigned to department 2236 located in plant 2. Shortly thereafter, the management coordinator delivered written assignments to the three removed appointees.

McBryar, the other appointee removed that day, was a quality network representative who had been appointed by the International. As noted, he had been involved in union politics, and was removed by the International at Yount's request, for that reason.

After being informed that she was going to department 2236, Kubelsky called Collins. She told him that, as late as 10:30 that morning, she had been scheduled to go to department 4302 and now she was going to department 2236. She asked Collins for an explanation. Collins explained that Kubelsky was filling a secondary opening of an employee who had transferred through the transfer agreement with the Union from his MST job in department 2236 to a new classification. She asked Collins if filling a secondary opening took priority over an open requisition and Collins confirmed that it did. When she questioned Collins further, he told her that he had just done what he was told.

Although Kubelsky felt that her assignment to department 2236 was wrong, she did not file a grievance nor a formal appeal. She did, however, file charges with the Labor Board on September 11, the day after she began work in her new department. Kubelsky spent the rest of September 9 cleaning out her desk.

Although the record is unclear as to precisely why Kubelsky was not assigned to department 4302 as she originally expected, it is clear why she was needed in department 2236. The records indicate that employee Jerry Norris, a material services trucker in department 2236, on July 8, filed an application for transfer to a different classification, entitled manufacturing, general. For one reason or another, perhaps because there were no openings or maybe there was no replacement available for Norris, his application was not immediately acted on. On August 21, however, a job opening for an employee in the manufacturing, general classification occurred in department 0385. Nevertheless, Norris' application was not honored at this time, probably because there was no replacement available to backfill his job. On September 9, when Kubelsky was removed from her training program, she immediately became available to fill Norris' job since she was a material services trucker. She was immediately assigned to his job and he was released the same day to fill the manufacturing, general position in department 0385, available since August 21. Meanwhile, the material services trucker position in department 4302, which Kubelsky had expected to fill, open since September 3, was not filled until October 21, thus indicating that the Company gave far more priority to the replacement of Norris and to the filling of the manufacturing, general vacancy than to the filling of the opening in department 4302. The transfers all around appear to have served legitimate business consider-

¹¹ Kubelsky denied this version of the confrontation. I credit Garrett, however.

¹² Kubelsky denied having done this. I credit Yount.

ations. Moreover, although under the transfer agreement, an employee has a right to be returned to his classification, on removal from a particular position, he has no right under that agreement to be assigned to a particular job or department, not even to a position he had previously held. To be assigned to a new classification or to a particular plant or department, an employee must file an application for transfer to have his preference receive consideration. Without such an application on file the Company is free to place a displaced employee anywhere at its convenience. At the time of her removal from the training program, Kubelsky had no application for transfer on file.

Dennis Hinman, on September 9, was transferred to department 1350 in plant 6, to fill an open requisition. When he first was transferred into the training center, it was from department 4399. Thus, Hinman was not returned to his old department. Since he had no application for transfer on file at the time, he was not considered for any particular placement which he might have desired. The Company was thus free to place Hinman anywhere as long as it was a job in his classification. His classification was one to which he had been assigned while in the training program. Hinman did not dispute the appropriateness of his job assignment on removal from the training program.

Kubelsky started on her new assignment at 4 p.m. on Tuesday, September 10. According to her testimony, department 2236 is a warehouse for spare parts that are shipped out to customers who generate the orders. A group of employees called pickers go out and pick the individual pieces to fill the orders, then bring them to packers who box the orders. The packers place the boxes on a conveyor which carries the boxes to Kubelsky's work station. Kubelsky takes the boxes off the conveyor and places them on a table scale, weighs them, and enters the weight into a computer which generates shipping labels. She then adheres the labels to the boxes which she then carries over to place on skids for the truckdrivers to pick up.

Kubelsky testified that she carries the boxes manually because there is no overhead crane. The boxes reach a maximum weight of 70 pounds and average 150, in number, per night or 300 lifts per shift. The job involves some bending since the conveyor is about 1 foot from the floor. There are 16 to 18 employees working in department 2236 on Kubelsky's shift and this is the only warehouse of its type in the division.

Kubelsky compared her work in department 2236 with the work she would have been doing had she been assigned to department 4302, as expected. She testified that in department 4302 she would have been on the afternoon shift working with about 150 other employees, but with her seniority she would have been able to bump onto the day shift immediately, on which some 300 employees work. She admitted that in department 4302 she might have been involved in some heavy lifting and other physical labor but little bending since the lifting is primarily chest high lifting off shelves. Kubelsky testified that there was an unwritten rule throughout the division that anything weighing over 50 pounds is lifted by means of an overhead crane. She mentioned also that in department 4302 there are jobs similar to the one she held before going into the training program, consisting of computerized scheduling and recordkeeping.

Kubelsky testified that while employed in department 2236 she sustained a work-related injury and was off on workman's compensation for an unknown period of time. The record is silent as to when the injury was suffered and how much work she missed.

To counter Kubelsky's description of the duties she had been assigned in department 2236, Respondent Company called as a witness, Robert Gray, an hourly employee working on the day shift in the same department in the same classification as Kubelsky. He testified that he performs the same duties as she. He agreed with Kubelsky that they receive the boxes sent down the conveyor by the packers but noted that the MST controls the conveyor's speed, that he lifts only the smaller boxes to the scale, and that he lets the heavier ones go by to an integral scale built into the conveyor, then on to where the forklift drivers will come and pick them up. Gray testified that he handles on an average, 100 boxes per shift and does the job alone whereas there are 2 MSTs on Kubelsky's shift. The average weight of the boxes, according to Gray, is between 8 and 12 pounds and he will not pick up anything over 50 pounds. At his discretion, Gray will sometimes ask the group leader to help lift a box if he does not want to lift it alone. The heavier boxes average 36 pounds. Occasionally a 50-pound box is sent down the line. These are identified by markings on the top, made by the handlers further up the line, so that the MST knows enough to let it go by. These, boxes, so marked, have not been put on skids because, although heavy, they are too small. Other 50-pound boxes have already been put on skids. These, the MST bands to the skid. After putting the proper information into the computer, the box, banded to the skid, rolls on down to the truckdriver to load.

Gray testified that he will handle boxes that are 39 or 40 pounds but if he receives a box that weighs in the high 40s or 50 pounds, he considers it a mistake and sends it back to be placed on a skid. Since the MST controls the conveyor, he can stop it at any time and tell the packers not to send such heavy boxes. Gray testified that he liked his job and denied that it was onerous. He stated credibly that he has 26-1/2 years of seniority and could have transferred out of his job, if he chose, at any time, but has not done so. Gray testified that he observed Kubelsky at work and although he could not comment on the manner in which she performed the job, he could say that it was the same job that he did. He added that the only 70-pound box he ever got was on a skid.

Jim Fennell, who had been personnel manager, and who, at the time of the hearing, was manager, employee relations, also described the duties of an MST in department 2236. His testimony was in general agreement with that of Gray. The Company placed in the record a job description for the MST classification. It contains the phrase "May be required to do heavy lifting," which, of course, is relative. Also placed in the record was a list of employees, with less seniority than Kubelsky, who successfully moved to different classifications under the Company's transfer agreement with the Union. Kubelsky has not filed an application for transfer to another classification or shift, nor a grievance or safety grievance since her placement in department 2236. Any grievance she might have filed would have been handled through her elected committeemen. Only if the grievance were not resolved at steps 1(a) or (b) would Yount become involved.

Conclusions

The record reflects that Terry Yount and each of the members of the shop committee were duly elected by the union membership in the unit of employees they were to represent. These union officials gained office following a campaign in which they presumably promised the electorate that they would serve them to the best of their ability, perform their duties in a trustworthy manner, and undertake programs which would benefit the membership.

In order to fulfill the promises made to the electorate, to faithfully perform his duties and to carry out his program, each chairman, after being elected, appointed a number of individuals to various offices, to see that his programs were successfully administered. Of necessity, these appointees had to be trusted to be loyal to the chairman's administration, to his programs, and to the objectives of those programs. The chairman and his committee had a right to be confident that his appointees would remain loyal to him, his committee, and their programs. Any indication of disloyalty to his administration or any attempts to undermine his programs should result in the removal of that appointee. This is only proper, otherwise the administration would be inoperative and the programs would fail.

In the instant case, Yount did not seek the discharge of Kubelsky and Hinman. He merely removed them from the offices they had been assigned by the chairman in office at the time. He did this because he suspected that they were politicking against his administration and he could no longer count on their complete loyalty to carry out their duties in full conformance with his directives, thus putting the program to which they had been assigned, in jeopardy. From the viewpoint of the Union, its chairman could remove any appointee from a position to which he had been appointed by that chairman or predecessor, even for politicking. For the reasons stated supra, I agree.¹³

From the viewpoint of the Employer, it hired Kubelsky and Hinman as rank-and-file employees and assigned them classifications with corresponding duties connected therewith to be performed at their work stations in the plant. Kubelsky and Hinman satisfactorily performed their duties. When, in accordance with the collective-bargaining agreement with the Union and the jointness program, the shop committee chairman appointed Kubelsky and Hinman to positions in the training center, the Employer continued paying them the same wages and awarding them the same benefits, in accordance with their respective classifications. When the two alleged discriminatees were removed from their positions at

the training center, they were returned to jobs in their classifications with no change in wages or benefits. I find that the Employer acted properly in permitting the shop chairman to first appoint Kubelsky and Hinman to positions in the training center then later remove them from those positions.

From the viewpoint of Kubelsky and Hinman, it is understandable that they should be displeased with their removal from their positions at the training center. However, they were hired by the Employer to perform manual labor in one or another of its plant. They were not hired to perform white collar or clerical duties. When they were returned to plant duties, the work was, of course, more onerous than that which they had performed in the training center. That their duties had become more onerous, however, was not due to any discriminatory motivation on the part of the Employer, but rather to the mechanics of the transfer and the nature of the jobs.

As to the allegation that Kubelsky was assigned to a more onerous job in department 2236, rather than to the job she sought in department 4302 for discriminatory reasons, I find insufficient evidence to warrant the conclusion that the transfer to the one department rather than the other was motivated by reasons violative of the Act. Moreover, with regard to the duties performed by Kubelsky in department 2236, I credit Gray's description of the MST's duties over that of Kubelsky. I find those duties not all that onerous, otherwise Kubelsky would have filed an application for transfer which, because of her seniority, she could have, in all probability, successfully done. I shall, accordingly, recommend the dismissal of all allegations.

CONCLUSIONS OF LAW

1. The Company is an employer within the meaning of Section 2(2) and is engaged in commerce as defined in Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Neither the Company nor the Union has committed any of the unfair labor practices alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

The complaint is dismissed in its entirety.

¹³ *General Motors Corp.*, 132 NLRB 1325 (1989); *Shenango, Inc.*, 237 NLRB 1355 (1978).

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.